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In the Supreme Court of the United States

No. 608.

LUCILLE E. MORAN,
PETITIONER,

v.

HARRY D. PENAN ET AL.,
RESPONDENTS.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

LUCILLE E. MORAN,
Petitioner, Pro se

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RESPONDENTS.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

The Petitioner, Lucille E. Moran, respectfully moves for leave to file the annexed petition for timely rehearing of the order of this Court denying petition for writ of certiorari in this case, entered on December 6, 1965.

Rehearing is sought primarily, as is pointed out more fully in the annexed petition, because section 1984 of Title 42 of the United States Code entitled, **"Same; Review of Proceedings"** requires this Court to review all cases brought under section 1983 of Title 42.

Timely rehearing is sought for the secondary reason that the decision of the Court of Appeals for the First Circuit is in direct conflict with this Court's decisions in *McNeese* v. *Board of Education for Community Unit School District 187,* Cahokia, Illinois, 373 U.S. 668; and prior cases.

Rehearing is further sought at this time, for the tertiary reason, that the decision of the Court of Appeals for the First Circuit is in direct conflict with the decision of the Court of Appeals for the Fifth Circuit in *Nesmith* v. *Alford,* 318 F 2d 110; and the decision of the Court of Appeals for the Ninth Circuit in *Hoffman* v. *Halden,* 268 F 2d 280.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se

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Petitioner, Lucille E. Moran, prays that this Court grant rehearing of its order of December 6, 1965, denying the petition for writ of certiorari, No. 608, Oct. Term, 1965, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit in the above entitled case as prayed for in the petition filed September 24, 1965, herein.

Reasons for Granting Rehearing and Issuing the Writ

1. In her petition for writ of certiorari, the petitioner cited 42 U. S. C. 1984 to invoke the jurisdiction of this Court; recited its text in Appendix thereto; but did not urge it as an essential demand of the law, because this Court has established a uniform policy of granting writs of certiorari in cases arising under provisions of 42 U. S. C.

1983, as a matter of its discretion. The petitioner had no reason to believe she would be made the exception.

Title 42, United States Code, section 1984, at page 8021, entitled, **"Same; Review of Proceedings"**; reads as follows:

> "All cases arising under the provisions of this act in the courts of the United States *shall be reviewable* by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court. Mar. 1, 1875, ch. 114, Section 5, 18 Stat. 337
>
> "REFERENCES IN TEXT
>
> This act, referred to in the text, has reference to act Mar. 1, 1875. Sections 1 and 2 of said act Mar. 1, 1875 were not classified to this Code. Sections 3 and 4 of said act Mar. 1, 1875, formerly classified to sections 44 and 45 of Title 8, were repealed by act June 25, 1948, ch. 645, section 21, 62 Stat. 862, and are now covered by sections 243 and 3231 of Title 18, Crimes and Criminal Procedures. *Section 5 of act Mar. 1, 1875 is classified to this section.*"
>
> (Emphasis supplied)

The preamble to this Act of the Forty-third Congress of March 1, 1875, sets forth with exceeding clarity, the spirit and intent of law; conscientious, even-handed justice; and orderly Constitutional government, in the following language:

> "Whereas, it is essential to just government we recognize the equality of all men before the law; and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice

> to all, of whatever persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore . . . . . "

The petitioner now urges rehearing be granted and the writ issued, based on 42 U. S. C. 1984, because Section 5 of the Act of March 1, 1875 has been specifically classified to Section 1983 of Title 42 of the United States Code.

2. The decision of the Court of Appeals for the First Circuit is in direct conflict with this Court's decision in *McNeese* v. *Board of Education for Community Unit School District 187,* Cahokia, Illinois, 373 U.S. 668. Significantly, the Court reviewed the McNeese case and other causes arising under the provisions of section 1983 of Title 42 in the courts of the United States, and unreservedly granted petitions for writs of certiorari. See *Monroe* v. *Pape,* 365 U.S. 167; and *Cooper* v. *Pate,* 378 U.S. 546.

The doctrine of the equality of all men before the law, to enable protection of each in his rights, without favor or prejudgment is not amenable to a policy of hasty discretions. No government can secure and enforce a purpose of "equal and exact justice to all" except through its Courts. To grant use of Courts to some, and to deny usage to others similarly protesting deprivations of rights, privileges and immunities secured by the Constitution and laws, is to place any persons so denied outside the protection of the law by excommunication: An anachronism of silence repugnant to the historical liberties intended by the First Constitutional Amendment. It was fitting that the Forty-third Congress should enact legislation on March 1, 1875, to make the great principles of the Thirteenth and Fourteenth Constitutional Amend-

ments and laws arising therefrom, enforceable, equally and exactly for all by requiring Supreme Court review, as is now classified to Civil actions for deprivation of rights; thereby comprehending the proposition that Rule of Law supersedes rules made for the convenience of men, when the gravamen of a complaint concerns the Constitutional rights, privileges and immunities of the aggrieved.

3. The decision of the Court of Appeals for the First Circuit is in direct conflict with decisions of the Court of Appeals for the Fifth Circuit in *Nesmith* v. *Alford,* 318 F 2d 110; and the Court of Appeals for the Ninth Circuit in *Hoffman* v. *Halden,* 268 F 2d 280.

In the Nesmith case, the Court said, in sustaining the cause, with reference to actions brought jointly under provisions of sections 1983 and 1985 of Title 42:

> "To claim under section 1983 of this title, giving civil action for deprivation of civil rights, conspiracy is not an indispensible element as it is under this section expressly conferring action for conspiracy to interfere with civil rights, but it may be charged as legal mechanism through which to impose liability on each and all of defendants without regard to person doing particular act, and conspiracy is asserted in that situation on more or less traditional principles of agency, partnership, joint venture and the like."

In the Hoffman case, the Court said at page 293, in sustaining the complainant's cause of action, also brought jointly under provisions of sections 1983 and 1985 of Title 42:

> "A cause of action for conspiracy or joint action based on violation of section 1983 of this title providing that every person who, under color of any statute,

ordinance, etc, of any state or territory subjects or causes to be subjected any citizen of the United States or other person within jurisdiction thereof to deprivation of any right, privileges, or immunities secured by Constitution and Laws shall be liable to injured party, is broader than conspiracy to impede justice with intent to deny a citizen equal protection of the law and conspiracy to deprive a person or class of persons of equal protection of the law or equal privileges and immunities under the law."

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the First Circuit.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se

CERTIFICATE

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

(s) LUCILLE E. MORAN
Lucille E. Moran, Petitioner
Pro se